

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

PHYSICIANS INDEMNITY RISK
RETENTION GROUP, INC,

Plaintiff(s),

vs.

RISK MANAGEMENT CENTER,
INC, *et al.*,

Defendant(s).

Case No. 2:09-cv-1544-RLH-PAL

ORDER
(Motion to Strike Arbitrator #74)

Before the Court is Plaintiff's **Motion to Strike Appointment of Arbitrator** (#74, filed January 12, 2011). Defendant Mark Dorfman's Opposition (#76) was filed January 26, 2011. Plaintiff's Reply (#80) was filed February 7, 2011. Having considered all these documents, the Court will grant the motion.

The appointment at issue is the appointment of Vernon E. Levery, by Mark Dorfman as arbitrator for Mr. Dorfman, Risk Management Center, Inc. ("RMC"), and Actura, Inc. ("Actura").

The bases for the motion are (1) that Plaintiff has settled its claims with RMC and Actura (see #79, filed February 4, 2001); and (2) Mr. Levery and his law firm has acted as counsel for Dorfman, RMC and Actura in dealings with the Nevada Division of Insurance related to this case. Defendant Dorfman denies both bases.

////

1 I. THE SETTLEMENT OF CLAIMS

2 At the time Dorfman filed his Opposition to the motion, the settlement had not been
3 concluded. Accordingly, he was, at that time, correct. However, the settlement had obviously already
4 been agreed to, although it was only made of record in February 2011.

5 If RMC and Actura have settled, the appointment of an arbitrator on their behalf is
6 void. The record confirms the settlement and dismissal and the Court finds that the appointment of
7 the arbitrator on behalf of RMC and Actura should be stricken.

8 II. DISINTEREST OF APPOINTED ARBITRATOR

9 Although Defendant Dorfman argues strenuously that the other Defendants cannot
10 have settled with Plaintiff, the record belies that argument.


11 Defendant Dorfman also argues, with even more force, that Mr. Leverty never
12 represented Dorfman, only RMC. His arguments not only belie the facts, they border on the
13 disingenuous.

14 For example, although he may have technically only represented RMC, he was hired to
15 do so by Dorfman, who was the President, Director, and the admitted guiding force and decision
16 maker for RMC.

17 In Leverty's correspondence with the Nevada Division of Insurance, Mr. Leverty takes
18 positions regarding key issues in this case including the validity of the Management Agreement and
19 the issue of ownership of records under the Agreement. The purposes of those letters are to advocate
20 both Dorfman and RMC's position. Leverty made the same arguments on behalf of Dorfman and
21 RMC that Dorfman and Dorfman Defendants will be making in the arbitration. It cannot now be
22 argued that he is disinterested.

23 Furthermore, both Dorfman and RMC shared a unity of interest through most of this
24 litigation. To now claim that, technically, Leverty only represented RMC, and has not confided in
25 and with Dorfman about the issues of this case, strains credulity.

26 ////


Roger L. Hunt
United States District Judge